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Dkt. No. 6065-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	
Glenn E. RIGGS et al.	:	Art Unit: 3623
Application No. 09/915,301	:	Examiner: Susanna Meinecke Diaz
Filed July 27, 2001	:	
For: TRANSPORT LOGISTICS SYSTEMS AND METHODS	:	

Commissioner for Patents
Alexandria, VA 22313

December 30, 2003

Sir:

APPEAL BRIEF

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I. Real Party in Interest

The real party in interest in this appeal is Odyssey Logistics & Technology Corporation, of 39 Old Ridgebury Road, Danbury, Connecticut, 06810, the assignee of the present application.

II. Related Appeals and Interferences

There are no related appeals or interferences.

III. Status of Claims

Claims 1-45, reproduced in **Appendix A**, were pending and were finally rejected by the Examiner in the Office Action dated July 31, 2003. The Notice of Appeal appealing said final rejection was filed on October 30, 2003.

IV. Status of After Final Amendments

An After Final Amendment was filed on September 2, 2003. An Advisory Action dated September 23, 2003 indicated that the Amendment would be entered for purposes of appeal. The reproduction of the claims in Appendix A includes the changes made in the amendment.

V. Summary of Invention

Appellants' invention is directed to a logistics system and method for the transportation of goods. In the preferred embodiment, a third party intermediary operates a fully integrated logistics system for the transport of goods from a plurality of different shippers by a plurality of different carriers. It operates across all major modes of transport (i.e., truck, rail, containership, bulk tanker, and air) and has full logistics supply chain capability. This provides numerous advantages in circumstances where goods are transported across multiple modes.

Although each transport mode has unique characteristics, standard work processes, and business requirements, a key aspect of the preferred embodiment is that it enables the modes to be integrated. Various related transport business interests are accommodated, including suppliers, customers, and government agencies. By virtue of the various information available from the transport business interests, the third party intermediary has leverage to identify differences between rates and negotiate intermediate rates that benefit all concerned parties.

The logistics system of the third party intermediary is networked with the electronic systems of the business interests. It preferably receives input information that allows the transactions to be conducted electronically and thus simplified. It also allows documents, status reports and notices to be provided electronically. Unique in the Appellants' invention, as illustrated in Figs. 1A – 1C of the application is the provision of a number of modules integrated together into an optimal logistics system administered by the third party intermediary.

VI. List of References

The Examiner referred to the following references in the final Office Action, copies of which are provided in **Appendix B**:

1) Wojcik, U.S. Patent No. 5,758,329
2) Edward Marien, "Structuring the Shipper/Carrier Relationship", Transportation and Distribution (July 1995)
3) William Augello, "Take it to the Limit", Distribution, (June 1997)

VII. Issues

Whether the final rejection of claims 1-3, 5-6, 8-11, 13, 15-17, 19-25, 32, 34-37 and 40-41, as being anticipated by U.S. Patent No. 5,758,329 to Wojcik, should be reversed.

Whether the final rejection of claims 4, 7, 12, 14, 18, 26-31, 33, 38-39, and 42-45, as being obvious over U.S. Patent No. 5,758,329 to Wojcik, should be reversed. In the Response to Arguments portion of the final Office Action, the Examiner also referred to the articles by Edward Marien and William Augello (copies included in Appendix B) with respect to the obviousness rejection. Although it is believed that these articles are not properly part of the obviousness rejection, appellants will address the articles in this Brief.

VIII. Grouping of Claims

Appellants submit that the all of the claims 1-45 do not stand or fall together and that they should be considered in multiple groups as follows. The first group to be considered comprises claims 1-3, 5-6, 8-11, 15-17 and 19-25. The second group comprises claim 13. The third group comprises claims 32, 34, 36, 37 and 41. The fourth group comprises claims 35 and 40. The fifth group comprises claims 26, 28-30, 33, 38, 39, and 42-45. The sixth

group comprises claim 27. The seventh group comprises claim 31. Each one of dependent claims 4, 7, 12, 14, 18 comprises its own respective group consisting of only that claim.

IX. Arguments

a. Claims 1-3, 5, 6, 8-11, 15-17 and 19-25

Independent claim 1 (claims 2, 3, 5-6, 8-11, 15-17 and 19-25 are each dependent on claim 1) recites an integrated logistics system for "managing the shipment of goods supplied from a plurality of different shippers..." In other words, the party managing the shipment of goods is not itself one of the plurality of shippers. As made clear in the drawings in the application, the managing party is a third party to the shippers.

The system in the Wojcik patent is thus fundamentally different from the logistics system recited in claim 1 because it is directed to a system which allows an organization "to reduce the outbound and also the inbound freight costs of the organization." Although the organization uses a plurality of carriers to ship goods, the shipments are shipments from the organization itself and are not shipments from a plurality of different shippers. The customers of the organization are not shippers - they are purchasers of goods from the organization. The organization itself is the shipper responsible for shipping the purchased goods to its own customers. Thus, there is not a plurality of different shippers in Wojcik as recited in claim 1.

Claim 1 also recites a purchasing module "evaluating proposals by shippers for respective shipments of goods. . ."; an optimization module "analyzing the proposals"; and a contract administration module maintaining information relating to the status of proposals received..." The final rejection cites the portions of the Wojcik patent at col. 1, lines 53-62;

col. 4, lines 35-58; and col. 5, lines 9-21 as constituting the purchasing module. However, these cited portions refer to orders from customers who wish to buy and receive goods from the organization. They are not orders from a plurality of different shippers. Furthermore, they are not proposals for shipments as recited in claim 1. The orders in Wojcik are not proposals because the goods have already been purchased by a customer of the organization and the organization has already agreed to ship the ordered goods to the customer. Wojcik describes a system that permits the organization to merely determine how best to ship the purchased goods and there is no proposal for shipment to be evaluated as recited in claim 1.

The rejection cites col. 8, line 55, to col. 10, line 41, of Wojcik as disclosing the recited optimization module. Although the cited portion might suggest consolidation of orders by customers, it does not disclose an optimization module as recited in claim 1. The rejection cites col. 2, lines 35-58, of Wojcik as disclosing the recited contract administration module. However, the cited portion of the patent is merely a brief description of some of the drawings. In any event, it is not sufficient for the Wojcik system to provide reports of awarded contracts in order to anticipate claim 1. The contract administration module recited in claim 1 maintains information on the status of proposals and contracts and there is no disclosure of maintaining status information in Wojcik. Furthermore, for the reasons stated in the previous paragraph, Wojcik is concerned with actual orders for goods by customers rather than proposals by shippers for respective shipments. Therefore, notwithstanding whether or not there is an optimization module or a contract administration module in Wojcik, it is clear that any such optimization module or contract administration module does not operate with respect to proposals as recited in claim 1.

b. Claim 13

The final rejection rejected claim 13 as being anticipated by Wojcik. Claim 13 is dependent on claim 12, and therefore includes the limitations of claim 12. Claim 12 recites a regulatory module. The final rejection acknowledges that Wojcik does not disclose a regulatory module (see obviousness rejection of claim 12 on page 13 of the final Office Action). Because claim 13 includes all of the limitations of claim 12, including the regulatory module which is admittedly not disclosed by Wojcik, claim 13 cannot be anticipated by Wojcik.

c. Claims 32, 34, 36 and 37

Independent claim 32 is directed to a method of arranging for the shipment of goods from an origin to a destination. It recites "retrieving routing information for a plurality of different transport modes" and "determining a routing for the shipment of goods from said origin to said destination based on said retrieved routing information." The originally filed specification makes clear that the different transport modes are, for example, air, truck, ocean tanker, etc., and that the routing information is the path along which goods are shipped. Thus, the routing information for an ocean tanker transport shipper would indicate that there is a route from Honolulu to San Francisco, but that there is no route from Denver to Cincinnati. Conversely, the routing information for a truck transport shipper would indicate that there is a route between Denver and Cincinnati, but not between Honolulu and San Francisco.

The rejection cites col. 10, lines 54-67, as disclosing the feature of retrieving routing information for different transport modes and cites col. 10, line 60, to col. 11, line 30, as

disclosing the feature of determining a routing. However, the cited portion in column 10 merely mentions in-house fleets and truck carriers. There is no indication of a plurality of different transport modes in Wojcik as recited in the retrieving step of claim 32. The Response to Arguments in the final Office Action suggests that having trucks with different special equipment may constitute different transport modes, but this is simply inconsistent with the use of that terminology in the original specification.

Furthermore, neither one of the cited portions in Wojcik discloses routing information for different transport modes. They mention only the service areas which are served by the carriers, and this does not suffice to indicate the presence of routes in the transport mode. The Response to Arguments in the final Office Action suggests that routing information is provided in Wojcik since trucks are sent to different locations to pick-up and drop-off shipments and the driver must use some route to make the shipment. However, claim 32 recites determining routing for a shipment from the routing information, and Wojcik merely states whether a carrier services a particular area without any information as to routing.

d. Claims 35 and 40

The final rejection rejected claims 35 and 40 as being anticipated by Wojcik. Claim 35 and 40 are each dependent on claim 31, which in turn is dependent on claim 26. Each one of claims 35 and 40 therefore includes the limitations of claims 26 and 31. The final rejection acknowledges that Wojcik does not anticipate claims 26 and 31 (see obviousness rejection in the final Office Action). Because each one of claims 35 and 40 includes all of the limitations of claims 26 and 31, which are not disclosed by Wojcik, claims 35 and 40 can not be anticipated by Wojcik.

e. Claims 26, 28-30, 33, 38, 39 and 42-45

Independent claim 26 (claims 28-30, 33, 38, 39 and 42-45 are dependent on claim 26) is directed to a method of arranging for the shipment of goods by one of a plurality of carriers. It recites "receiving a proposal for the shipment of goods supplied from a shipper, said proposal including shipping information relating to the shipment of the goods and transaction information relating to the contract terms for the shipment"; "evaluating the proposal..."; and "creating an electronic abstract of a contract between the shipper and the selected carrier for the shipment of goods identified in the proposal."

Applicants respectfully submit that the rejections fail to establish a prima facie case that the applied references suggest each and every one of the features in claim 26. The features of the method recited in claim 26 that applicants submit are not suggested by the references are as follows:

1) receiving (and evaluating) a proposal for the shipment of goods supplied from a shipper; and

2) creating an electronic abstract of a contract between the shipper and the selected carrier for the shipment of goods identified in the proposal.

For the reasons discussed above with respect to claim 1, appellants respectfully submit that Wojcik does not suggest receiving and evaluating a proposal for the shipment of goods supplied from a shipper. As explained above, in Wojcik the organization is itself the shipper and so it would not receive a proposal from itself for the shipment of goods. In the Response to Arguments section in the final Office Action, the Examiner apparently relies upon the other articles (to Marien and Augello) as disclosing the receipt of proposals from shippers and the selection of a carrier for a proposed shipment. However, the description of these articles is

incorrect – the articles actually state that the shippers receive proposals from a plurality of carriers.

Even accepting the description of the articles as correct for the sake of argument, the Examiner nevertheless still fails to establish a prima facie case for the obviousness rejection of claim 26. Indeed, the final Office Action fails to even make clear whether the obviousness rejection is based on a proposed modification of Wojcik to include this asserted aspect of the other articles related or whether the obviousness rejection is based on some other grounds. Assuming that the Examiner now acknowledges that the disclosure of Wojcik does not suggest the feature of receiving proposals from a plurality of shippers but relies upon the articles therefore, it still does not establish any motivation for the proposed combination of references.

Indeed, if one of ordinary skill in the art did simultaneously consider Wojcik and these other articles, they would not in fact be motivated to make a combination or modification so as to arrive at the claim invention. The teaching to be surmised from the reference is that of one of ordinary skill in the art considering the reference as a whole. For instance, paragraph 4 of the article by Marien cited in the Response to Arguments in the final Office Action, states that the shippers "should start with quotes of rates from their carriers on a full-value basis, select the best quotes from the carriers and then request proposals from those carriers on a released-rate basis." Thus, if this were implemented in the organization's logistics system in Wojcik, then the organization acting as its own shipper would request proposals from the carriers. However, this is contrary to claim 26, which recites receiving a proposal for a shipment from a shipper and then selecting a carrier for the shipment. In other words, these other articles do not suggest a third party intermediary utilizing an integrated logistics system

to match a proposal from a shipper with a carrier.

Secondly, applicants submit that there is simply no suggestion in Wojcik or the articles that "an electronic abstract" be created of a contract between the shipper and the selected carrier. The final rejection acknowledges that Wojcik does not suggest the electronic abstract recited in claim 26. Neither one of the other articles even mentions such an electronic abstract, much less provide anything that can be considered to be a suggestion that Wojcik should be modified to include such an electronic abstract.

Thus, the Examiner has failed to establish even a prima facie case that claim 26 including this feature is suggested by the cited references. Reference is made to the decision of the Board of Patent Appeals and Interferences in Ex parte Levy, 17 USPQ2d 1461 (1990), at 1462 where the Board states:

> "[i]t is incumbent upon the examiner to identify wherein each and every fact of the claimed invention is disclosed in the applied reference."

The obviousness rejection fails to identify wherein the feature of the electronic abstract recited in claim 26 is disclosed in any of the cited references. The rejection should be reversed at least for this reason.

f. Claim 27

Claim 27 is dependent on claim 26 and additionally recites "creating an electronic abstract of the response received from the selected carrier and confirming selection of the selected carrier with the shipper using the electronic abstract of the response." The obviousness rejection states that Wojcik discloses confirming the carrier, but acknowledges that it does not disclose the other features related to the electronic abstract. Although appellant has challenged that the electronic abstract is well known, the rejection nevertheless

asserts that it would have been obvious to create an electronic abstract even though no reference is ever supplied to support this assertion. For the reasons mentioned above, a prima facie case of obviousness is thus never established by the obviousness rejection.

Furthermore, the rejection suggests that it would have obvious to create an electronic abstract because it "would be a faster way to receive confirmation of the agreement." However, this advantage is made out by the originally filed specification of this application and the rejection improperly utilizes the hindsight provided by this application.

g. Claim 31

Claim 31 is dependent on claim 26 and additionally recites "sending an electronic abstract of the proposal to the potential carriers"; "evaluating responses to the electronic abstract received from the potential carriers..." and selecting one of the potential carriers "on the basis of the responses to the electronic abstract." The obviousness rejection states that Wojcik discloses many of the features, but acknowledges that it does not disclose the other features related to the electronic abstract. Although appellant has challenged that these features of the electronic abstract are well known, the rejection nevertheless asserts that it would have been obvious to utilize an electronic abstract as recited even though no reference is ever supplied to support this assertion. For the reasons mentioned above, a prima facie case of obviousness is thus never established by the obviousness rejection.

Furthermore, the rejection suggests that it would have obvious to create an electronic abstract because it "would have assisted Wojcik et al to decide what carrier to use for each shipment." However, this advantage is made out by the originally filed specification of this application and the rejection improperly utilizes the hindsight provided by this application.

h – l. Claims 4, 7, 12, 14 and 18

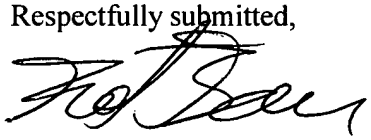
With respect to each one of these claims dependent directly or indirectly on claim 1 and included in the obviousness rejection, the rejection merely asserts that certain of the features recited in these claims are well known in the art. Claim 4 recites a confidential purchasing and contract system. Claim 7 recites a system with secured access and control. Claim 12 recites a regulatory module. Claim 14 recites a regulatory module that accesses ERP software information. Claim 18 recites the calculation of information on detention.

No document is cited as a secondary reference in the obviousness rejection to support any of these assertions. Appellants respectfully submit that these respective claims are separately patentable from claim 1 for the additional reason that the obviousness rejection fails to establish a prima facie case is established for the noted features recited therein.

X. Conclusion

For at least the reasons discussed above, applicants respectfully request that the July 31, 2003 final rejection of claims 1-45 be reversed.

Respectfully submitted,



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APPENDIX A

1. An integrated logistics system for managing the shipments of goods supplied from a plurality of different shippers by a plurality of carriers, said system comprising:

a purchasing module evaluating proposals by shippers for respective shipments of goods and awarding contracts for the shipments to the plurality of carriers;

an optimization module analyzing the proposals and informing the purchasing module if an opportunity exists for at least some of the shipments to be consolidated, in which case at least one contract awarded by the purchasing module is for a consolidated group of the shipments;

a contract administration module maintaining information relating to the status of proposals received and contracts awarded by the purchasing module;

a scheduling module sheduling shipments according to the awarded contracts;

a shipment management module tracking the status of shipments awarded by the purchasing module and scheduled by said scheduling module; and

a financial module authorizing payments according to the status of shipments tracked by the shipment management module.

2. An integrated logistics system according to claim 1, wherein the plurality of carriers includes ship owners and the logistics system includes a tanker planning module.

3. An integrated logistics system according to claim 2, wherein the tanker planning module includes a partitioned relational database storing collaborative data relating to shippers, freight forwarders and ship owners.

4. An integrated logistics system according to claim 3, wherein access to each partition in the relational database is selectively controlled and managed so that contracts between shippers and ship owners can be awarded by the purchasing module without revealing the confidential information of one party to the other.

5. An integrated logistics system according to claim 1, further comprising a data warehouse module storing operations data received from the shipment management module and commercial data received from the financial module.

6. An integrated logistics system according to claim 5, wherein the data warehouse module selects, filters, aggregates and repackages said operations data and commercial data to generate data mining, metrics and predetermined reports, and customizable reports.

7. An integrated logistics system according to claim 6, wherein the data warehouse module includes a front end interface offering secured access and controlled transfer between the data warehouse module in computer readable format.

8. An integrated logistics system according to claim 1, further comprising a carrier management module which tracks the performance of carriers and generates ratings of the carriers.

9. An integrated logistics system according to claim 8, wherein the carrier management module receives information from the front end interface of a data warehouse module.

10. An integrated logistics system according to claim 8, wherein the carrier management module receives metric requirements from the contract administration module.

11. An integrated logistics system according to claim 8, wherein the carrier management module receives exception information indicating shipment problems from an exception queue in the shipment management module.

12. An integrated logistics system according to claim 1, further comprising a regulatory module collecting information from other modules of the system and providing reports related to health and safety or governmental regulations.

13. An integrated logistics system according to claim 12, wherein the purchasing module blocks an award of a shipment to a carrier according to information maintained in the regulatory module.

14. An integrated logistics system according to claim 12, wherein the regulatory module accesses the MSDS and TSR information maintained in the Enterprise Resource Planning software of a shipper.

15. An integrated logistics system according to claim 1, wherein the shipment management module includes a relational database logging and storing all of the shipment records of the shipments awarded by the purchasing module and scheduled by said scheduling module.

16. An integrated logistics system according to claim 15, wherein the shipment management module includes a data management tool managing the viewing and/or updates of the data in the relational database in a secure change environment.

17. An integrated logistics system according to claim 15, wherein the relational database in the shipment management module receives information from the shipper and carrier for each shipment, the contract administration module, and the scheduling module.

18. An integrated logistics system according to claim 15, wherein the shipment management module receives or computes position data to audit and/or calculate current information on detention and to validate charges for detention.

19. An integrated logistics system according to claim 15, wherein the shipment management module computes inventory data to calculate the position and amount of inventory in the shipments tracked by the shipment management module.

20. An integrated logistics system according to claim 15, wherein the shipment management module provides information on the location and status of equipment of a given shipper or carrier.

21. An integrated logistics system according to claim 15, wherein the shipment management module includes an audit system allowing changes to shipment records in the relational database to be controlled and tracked per audit protocols and viewing of ths history and changes made to/during a shipment.

22. An integrated logistics system according to claim 15, wherein the shipment management module forwards an electronic authorization for payments to the financial module according to the shipments records in the relational database.

23. An integrated logistics system according to claim 1, wherein the contract administration module permits minor changes to a contract awarded by the purchasing module by coordinating change requests and change response messages between the shipper and the carrier.

24. An integrated logistics system according to claim 1, wherein the scheduling module receives electronic data from a shipper for a shipment and forwards said data to the corresponding carrier via a distributed communications network and XML.

25. An integrated logistics system according to claim 24, wherein the scheduling module matches and synchronizes the timing of notification, booking or offer of the shipment with the carrier and automatically notifies the shipper that the shipment has been confirmed.

26. A method of arranging for the shipment of goods by one of a plurality of carriers, said method comprising:

maintaining carrier information relating to each one of said plurality of carriers in a centralized logistics system;

receiving a proposal for the shipment of goods supplied from a shipper, said proposal including shipping information relating to the shipment of the goods and transaction information relating to the contract terms for the shipment;

evaluating the proposal to select a carrier from among said plurality of carriers; and

creating an electronic abstract of a contract between the shipper and the selected carrier for the shipment of goods identified in the proposal.

27. A method of arranging for the shipment of goods as recited in claim 26, further comprising creating an electronic abstract of the response received from the selected carrier and confirming selection of the selected carrier with the shipper using the electronic abstract of the response.

28. A method of arranging for the shipment of goods as recited in claim 26, wherein the carrier information includes qualification information for each one of the plurality of carriers.

29. A method of arranging for the shipment of goods as recited in claim 28, wherein the qualification information indicates the ability of the plurality of carriers to ship different categories of goods.

30. A method of arranging for the shipment of goods as recited in claim 29, wherein the different categories of goods include chemicals.

31. A method of arranging for the shipment of goods as recited in claim 26, further comprising sending an electronic abstract of the proposal to the potential carriers;

evaluating responses to the electronic abstract received from the potential carriers, said responses including shipping information supplied by the carrier relating to the shipment of the goods or transaction information relating to the contract terms for the shipment;

selecting one of the potential carriers for the on the basis of the responses to the electronic abstract and the carrier information maintained in said centralized logistics system.

32. A method of arranging for the shipment of goods from an origin to a destination, said method comprising:

retrieving routing information for a plurality of different transport modes;

retrieving carrier information relating to each one of a plurality of different carriers for each one of said plurality of different transport modes;

determining a routing for the shipment of goods from said origin to said destination based on said retrieved routing information; and

scheduling, via a computer network, the shipment of goods from said origin to said destination based on said carrier information.

33. A method according to claim 31, wherein the scheduled shipment of goods from said origin to said destination is scheduled to use at least two different transport modes.

34. A method according to claim 32, wherein the scheduled shipment of goods is arranged using a third party logistics system.

35. A method according to claim 31, wherein one of said plurality of different transport modes comprises truck transport.

36. A method according to claim 34, wherein said carrier information includes information relating to bulk truck carriers, truckload carriers, and less than truckload carriers.

37. A method according to claim 34, wherein said shipment is scheduled using information unique to truck transport.

38. A method according to claim 31, wherein one of said plurality of different transport modes comprises rail transport.

39. A method according to claim 37, wherein said shipment is scheduled using information which is unique to rail transport.

40. A method according to claim 31, wherein one of said plurality of different transport modes comprises containership transport.

41. A method according to claim 39, wherein said shipment is scheduled using information which is unique to containership transport.

42. A method according to claim 31, wherein one of said plurality of different transport modes comprises bulk tanker transport.

43. A method according to claim 41, wherein said shipment is scheduled using information which is unique to bulk tanker transport.

44. A method according to claim 31, wherein one of said plurality of different transport modes comprises air freight.

45. A method according to claim 44, wherein said shipment is scheduled using information which is unique to air freight.